

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDMOND N. GAUDELLI, :
Petitioner, :
v. : Case No. 2:95-cr-67-MBC-KAP-2
UNITED STATES OF AMERICA, : See Civil Action 2:10-cv-365
Respondent, :
:

MEMORANDUM ORDER

The petitioner's petition for a writ of coram nobis in this matter, docket no. 193, was referred to Magistrate Judge Keith A. Pesto in accordance with the Magistrates Act, 28 U.S.C. § 636(b) (3).

The Magistrate Judge filed a Report and Recommendation on February 23, 2010, docket no. 194, recommending that the petitioner's petition be denied.

The parties were notified that pursuant to 28 U.S.C. § 636(b) (1), they had ten days to serve and file written objections to the Report and Recommendation. Petitioner filed timely objections, docket no. 195, which I have reviewed but do not find to have merit. Petitioner's argument that his claim of ineffective assistance of counsel is new and entitles him to a writ is incorrect for two reasons. First, the claim of ineffectiveness is not new: in 1999, petitioner made virtually the same claim that his trial counsel was ineffective for failing to challenge the foundation for government's Exhibit 702, see docket no. 165 (motion to vacate under 28 U.S.C. § 2255), docket no. 174 (Report and Recommendation recommending denial of motion). Second, having a new claim would not be enough: to obtain a writ of coram nobis

petitioner must also adequately explain why the claim could not have been brought sooner. Petitioner's proffered explanation, docket no. 193 at ¶16, is that he was unable to file his motion until 2010 because he could not afford counsel because of his payment of legal fees for himself and for his son. Petitioner does not explain how that payment, which he describes as taking place most recently in 2002, prevented him for almost eight years from filing pro se substantially the same pleading that petitioner filed as a motion to vacate in 1999.

After de novo review of the record of this matter together with the Report and Recommendation, and the timely objections thereto, the following order is entered:

AND NOW, this 22nd day of March, 2010, it is

ORDERED that the petitioner's petition, docket no. 193, is denied. The Report and Recommendation is adopted as the Opinion of the Court.

BY THE COURT:

Maurice B. Cohill, Jr.
MAURICE B. COHILL, Jr.,
UNITED STATES DISTRICT JUDGE

Notice by ECF to counsel of record and by U.S. Mail to

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